

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KAREN AND SHELDON STONE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CIV-20-908-D
)	
MIDWEST CITY-DEL CITY PUBLIC)	
SCHOOLDISTRICT, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Before the Court is Plaintiffs’ Application for Leave to Amend Complaint and Motion to Stay Briefing on Defendants’ Motions to Dismiss [Doc. No. 6]. Upon consideration, the Court finds that it should be granted in part and denied in part, as set forth herein.

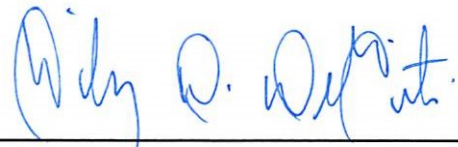
Following the removal of this case to federal court, it is governed by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 81(c)(1). Rule 15(a) provides in pertinent part: “A party may amend its pleading once as a matter of course within: . . . 21 days after service of a motion under Rule 12(b).” *See* Fed. R. Civ. P. 15(a)(1)(B). Defendants filed Rule 12(b)(6) motions less than 21 days ago on September 14, 2020. Therefore, even though Defendants may object to an amendment (*see* Mot., ¶ 4), the Court finds that Plaintiffs are authorized to file their proposed First Amended Complaint as a matter of right, by operation of Rule 15(a)(1)(B).

Defendants' pending motions to dismiss under Rule 12(b)(6) challenge the sufficiency of Plaintiffs' original petition. Plaintiffs' amended pleading "supersedes the original and renders it of no legal effect." *Davis v. TXO Prod. Corp.*, 929 F.2d 1515, 1517 (10th Cir. 1991) (internal quotation omitted); see *Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, 793 F.3d 1177, 1180-81 (10th Cir. 2015); *Mink v. Suthers*, 482 F.3d 1244, 1254 (10th Cir. 2007). Therefore, because Plaintiffs' filing of their First Amended Complaint renders Defendants' motions moot, there is no need to stay further briefing of the motions.¹

IT IS THEREFORE ORDERED that Plaintiffs' Application for Leave to Amend Complaint and Motion to Stay Briefing on Defendants' Motions to Dismiss [Doc. No. 6] is **GRANTED** in part and **DENIED** in part. Plaintiffs shall file their proposed First Amended Complaint [Doc. No. 6-1] within 7 days from the date of this Order. No further briefing of Defendants' motions is needed.

IT IS FURTHER ORDERED that Defendants' Motions to Dismiss [Doc. Nos. 3 and 4] are **DENIED** without prejudice to resubmission, if appropriate, in response to the First Amended Complaint.

IT IS SO ORDERED this 2nd day of October, 2020.



TIMOTHY D. DeGIUSTI
Chief United States District Judge

¹ In so holding, the Court expresses no opinion on the sufficiency of the First Amended Complaint to correct the alleged deficiencies raised by the motions.